

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT GUDU - ABUJA
ON THURSDAY THE 6TH DAY OF APRIL, 2023.
BEFORE HIS LORDSHIP; HON. JUSTICE MODUPE OSHO-ADEBIYI
SUIT NO: FCT/HC/PET/467/2020
MOTION NO: M/8763/2022
BETWEEN

JOSEPHINE ONYEJE ITUNBE -----
PETITIONER/RESPONDENT
AND
ASHIPLE F. ITUNBE ----- CROSS PETITIONER/APPLICANT
AND
AGI GODWIN AFUOH -----PARTY SOUGHT TO BE JOINED

RULING

By a Motion on Notice dated and filed the 29/06/2022, the Applicant brought this application seeking the following orders:

1. AN ORDER of this Honourable Court joining Agi Godwin Afuoh as a Co-Respondent in this petition.
2. AND FOR SUCH FURTHER ORDERS this honorable court may deem fit to make in the Circumstances.

In the supporting affidavit deposed to by AshipleF. Itunbe, the Respondent/Cross Petitioner, the deponent averred that he accused the Petitioner of committing adultery in his Cross-Petition. That at the time of filing his Answer/Cross-Petition he did not know the full name and address of the person with whom the Petitioner was committing adultery. That it was only sometimes in May, 2022 that he knew the name and address of the person that the Petitioner was committing adultery with.

That Consequently, he filed this Motion No. M/4863/2022 for the joinder of Agi Godwin Afuoh. That the motion was struck out on the 28th of June, 2022 before the Respondent and his counsel arrived the court late due to traffic gridlock and car mechanical fault. That it is expedient and in line with the Matrimonial Causes Rules that the said Agi Godwin Afuoh be joined as a party to this Petition so that it can be effectually determined. Applicant also filed a reply affidavit titled counter affidavit filed 21/11/2022 wherein deponent averred that it is not true that the Petitioner approached the party sought to be joined for a loan facility.

That in the IBTC statement of account frontloaded by the Petitioner the party sought to be joined consistently made lodgments into the Petitioner's account. That this Honourable court subpoenaed First Bank Plc to furnish it with the statement of account of the Petitioner for the period 1st July, 2015 — 24thDecember, 2021. That Counsel to the Petitioner and that of the Respondent, as well as the representative of First Bank PLC, examined the Statement of Account furnished by the said Bank in the court. That due to time constraints Counsel to the Petitioner, that of the Respondent, as well as the representative of First Bank PLC could not examine the whole voluminous document. That in the pages of the Statement of Account examined, it was found that the Person sought to be joined made one hundred and forty-eight (148) lodgments in the said account belonging to the Petitioner. That the lodgments ran into millions of Naira. That he has personally been seeing the Person sought to be joined and the Petitioner driving around the city on a number of occasions. That he has also encountered them quarrelling in the premises the Petitioner occupies at present, when he went to see his children. That his children have also informed him that the Petitioner and the Person sought to be joined used to 'fight' in her apartment. That it is in the interest of justice to join the person sought to be joined as this will lead to the effectual determination of this case. Attached to the affidavits are written addresses wherein learned counsel raised a sole issue each for determination, namely;

“Whether Agi Godwin Afuoh should not be joined for the effectual determination of this Petition”.

And

“Whether the person sought to be joined/Applicant ought not to be joined for the effectual determination of this suit”.

Summarily, learned counsel submitted that joinder of a party to a suit is to ensure that such a party is bound by the decision of the court. he relied on **OYEMYEMI V. OWOEYE (2017) 12 NWLR (PT.1589) 364 at 417** and **A. P. C. V. KARFI (2017) 16 NWLR (PT. 1592) 457 at 483**. That there is no gainsaying the fact that the only way that this suit can be effectually settled is the joinder of Agi Godwin Afuoh and that the Court can join a party suo motu, or in line with the Rules of Court. Citing **AKPARABONG COMMUNITY BANK (NIG) LTD V. UBA PLC & ANOR (2020) 8 NWLR (PT.1726) PP.217-218 paras. E-C**. Counsel further submitted that the statement of account showing the amounts of money the Person sought to be joined has been paying into the bank accounts of the Petitioner behind the “Respondent/Cross-Petitioner's back” requires some explanation and that the only way such explanation could be made is by joining the Person sought to be

joined. That the averment by the Person sought to be joined that the Petitioner approached him for "a loan facility" is duplicitous and unsatisfactory. That a loan facility connotes a one off Act but the Person sought to be joined has made numerous lodgments into the Petitioner's bank accounts. He cited **ASSOCIATED DISCOUNT HOUSE LTD V. THE HONOURABLE MINISTER OF THE ECT & ANOR (2013) LPLER-20088(SC)** and **CHINWEZE & ANOR V. MASI & ANOR (1989) LPELR - 851 (SC)**. Counsel urged the court to hold that the Person sought to be joined, to wit, AGI GODWIN AFUOH, is a necessary party.

In opposition to this application, the party sought to be joined filed an 8 paragraphs counter-affidavit sworn to by Godwin Agi Afuoh the party sought to be joined. In the counter-affidavit deponent averred that he knew the Petitioner before she got married to the Respondent /cross Petitioner. That he ceased all relationship of a personal nature with the petitioner as soon as she got married and any or every other contact has been entirely of a business nature only. That the petitioner approached him for a loan facility in aid of her business and he obliged her as somebody he knew and gave her money as a loan which she repaid. That he did not give her money for any other purpose other than business loan which she repaid with interest. That he has never had any filial/personal relationship with the petitioner since she married the Respondent. That he has never committed adultery with the petitioner at all at any time. That any relationship he has had with the petitioner since her marriage to the Respondent has been purely business and no more. That he is not a necessary party to this petition and the same can be determined without him being joined as a party. That the Respondent has not placed any fact before the court in support of his allegation of him committing adultery with the petitioner.

In the written address attached a single issue was formulated for determination, thus:

“Whether Mr. Godwin Agi is a necessary party to the cross petition”.

Summarily, learned counsel submitted that **Section 32(1) & (3) of the Matrimonial Causes Act** provided the conditions for joinder of this nature. Counsel submitted that nowhere in the Affidavit in support of the motion is any allegation of fact in support of the claim of adultery against Godwin Agi Afuoh. That a mere allegation without any fact whatsoever is not enough to bring somebody to answer such a serious issue of adultery. That the necessity of providing fact is provided in **Section 32(3) of the Matrimonial Causes Act** to the effect that if at the

end the court finds that there is no evidence to support such fact such a party will be struck out as the courts will only join "necessary parties" not just any party. Counsel cited **DUGU v. TSAMIYA (2018) LPELR-43789(CA)**, **ANYAH V. A.N.N. (1992) 6 NWLR (Pt. 247) 309**, **GBERE V. ALLIOWE (2000) 11 NWLR (Pt. 678) 294** AND **ALAMIEEYESEIGHA V. F.R.N (2006) 16 NWLR (Pt. 1004) 1 AT 114-115.**" Per **MUHAMMED LAWAL SHUAIBU, JCA (Pp 4-4 Paras C - F)**. Counsel further submitted that it is settled that only a necessary party can be joined in a suit as he will be bound by the outcome of the court's decision, or a party whose absence would prevent the matter to be logically concluded relying on **N.B.A. v. Kehinde (2017) 11 NWLR (Pt. 1576) 225**. Thus, that the only parties that must be present in a matter are necessary parties. **OHWAVBORUA & ORS v. PDP & ORS (2013) I-PELR - 20872 (CA)** and urged the court to refuse this application on the grounds that there are no facts in support, the petition can be determined without this joinder and it is brought in bad faith.

From the avalanche of decided cases on joinder of parties to an action, what stands out to be the cogent reason for court to order joinder of a party in a suit is for the party to be bound by the result of the decision of the court. This is due to the principle of law that a court of law cannot make an order to bound parties not before the court, it is only parties before the court that are bound by the decision of the court. Under **Section 32 of the Matrimonial Causes Act**, joinder of a party cited in adultery is necessary for a valid Petition in which there is prayer for dissolution of marriage on the ground that the Respondent has committed adultery. The provision is very clear on a person alleged to have committed adultery with a partner in marriage. The Law mandatorily requires he must be joined in the petition to afford him the opportunity of defence to such allegation where such a person is not joined, adultery per se, cannot constitute a ground for a decree for dissolution of such marriage. Joinder of adulterers is a mandatory requirement of the law. Where such adulterers are not joined, the petitioner cannot use any legal process for dissolution of the marriage on that ground as held in **EIGBE V. EIGBE (2012) LPELR-19690 (CA)**. The law is already settled that where a statute provides a means which an action must be commenced, legal proceedings cannot be commenced by any other means.

The question to be asked here is, "Whether the party sought to be joined a necessary party that the decision of the court will be bound on him?" The counsel for the Respondent has argued that the party sought

to be joined in this case is a necessary party as his presence will enable the court to effectually decide the issue submitted to it for resolution of this suit. However, the party sought to be joined argued per contra. It is the submission of counsel to the party sought to be joined that there are no facts in support of this application and that this suit can be determined without the presence of the party sought to be joined. The Respondent/Applicant averred in the affidavit in support of this application that at the time of filing the cross petition he did not know the full name of the person with whom the Petitioner was committing adultery.

In this regard a careful perusal of the Cross Petition reveals that one of the facts relied upon by the Cross Petitioner/Applicant as constituting the ground that the marriage between parties has broken down irretrievably is adultery. Flowing from the above, therefore, can we say that Agi Godwin Afuoh is a necessary party? Can we say that the claim or issues or prayers of the Cross Petitioner cannot be determined effectively without the presence of the party sought to be joined – Agi Godwin Afuoh? What are the facts relied upon on adultery as stated by the Cross Petitioner and the orders sought by the Cross Petitioner? By an Answer and Cross Petition dated and filed the 26/1/2021, the Cross Petitioner submitted two (2) facts on adultery and also prayed for five (5) reliefs. The facts on adultery for purposes of clarity as stated in the Cross Petition are:

- (a) The Petitioner-Respondent even before she deserted the matrimonial home had indulged in adulterous conducts. To this end she solicits for men (dates) on social media, to wit, Face Book. The Respondent pleads the Petitioner/Cross-Respondent's solicitation for men on Face Book, and will place reliance on same at the trial of this suit.
- (b) The Petitioner/Cross-Respondent frequents nightclubs, red light areas and hotels dressed in a seductive manner and unbecoming of a housewife. The Respondent/Cross Petitioner pleads the following photographs of the Petitioner/Cross-Respondent and will place reliance on the same at the trial of this suit:
 - (i) Photograph of the Petitioner/Cross-Respondent in a hotel dressed in tattered jeans.
 - (ii) Photograph of the Petitioner/Cross-Respondent in a Restaurant/hotel with her laps exposed.

- (iii) Photographs of the Petitioner/Cross-Respondent dancing in a nightclub.

From the facts of adultery relied upon by the Respondent as stated above, there is no where Respondent has proved or even insinuated nor linked Petitioner to adultery. The fact that Petitioner posts her pictures on Facebook, goes to nightclub and wears tattered jeans as her choice of clothing does not insinuate adultery on the part of the Petitioner. It is trite that a court is bound by the claim before it. It is not the duty of the court to go outside the claims before it. In this case, the Cross Petition of the Respondent as elucidated above does not incorporate facts as stated in his motion on notice. The motion before this court seeking for joinder is completely different from the Cross Petition. Nowhere in the Cross Petition does it incorporate facts as stated in the motion. In essence the motion is simply bringing in new facts and claims which is not before the court and the court cannot go on a frolic of its own in order to link the facts of the motion to the Cross Petition. Cross Petitioner ought to have amended his Cross Petition, put in line with facts stated in this motion but failed to do so. This is not the duty of the court but that of the counsel. It seems to me that this effort to join Agi Godwin Afuoh is unnecessary and amount to chasing shadow. I ask, when joined, what is the claim he is expected to answer or put differently, what is the claim against him?

In effect therefore, I hold that this application is devoid of all merit. Consequently, this application is hereby struck out.

Parties: Present

Respondent: C. O. C. Emeka-Izima appearing for the Petitioner/Cross Respondent. M. U. Idakwo appearing for the Respondent/Applicant. O. J. Ochunu appearing for the party sought to be joined.

HON. JUSTICE MODUPE R. OSHO-ADEBIYI
JUDGE
6/04/2023